



PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: September 24, 2002

RE: Report on Investigation of the National Education Association

At the Commission meeting of April 9, 2002, staff was prepared to report to you its findings in the investigation of the National Education Association (NEA). However, on April 8, 2002, the Evergreen Freedom Foundation (EFF) filed its own lawsuit against the NEA in Thurston County Superior Court alleging violations of RCW 42.17.760. As a result, the Commission took no action at the April 9, 2002 meeting.

The PDC investigation resulted from a citizen action letter (pursuant to RCW 42.17.400) that was filed by EFF and individuals on January 31, 2002, alleging that the NEA violated the following:

- RCW 42.17.040 by failing to register and report its Ballot Measure/Legislative Crisis and Media Campaign fund as a political committee;
- RCW 42.17.680 by diverting a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions without the written authorization of the employee; and
- RCW 42.17.760 by using agency shop fees to make contributions or expenditures to influence an election or to operate a political committee without authorization from the employee.

On August 23, 2002, Thurston County Superior Court Judge Paula Casey dismissed the lawsuit filed by EFF against the NEA. A copy of the Verbatim Report of Proceedings is attached. Judge Casey based her decision to dismiss the case on a decision by the WA State Court of Appeals, State ex rel. Evergreen Freedom Foundation v. Washington Education Association, No. 25272-4-II, where the court stated that: "Before the 10-day period had passed after EFF's second letter to the AG, the AG forwarded the allegations

to the PDC for investigation. This was appropriate action for the AG to take and it tolls the 10-day deadline...Because the AG acted before the end of the 10-day period, EFF could not bring a citizen's lawsuit under RCW 42.17.400..."

At your August 27, 2002 meeting, staff advised you of staff's intent to bring this matter to you for consideration at your meeting on October 2, 2002.

We are now bringing this matter back to you for possible action.

Findings regarding alleged violation of RCW 42.17.040

In July, 2000, the Representative Assembly of the NEA passed a bylaw, effective September 1, 2000, that created the Ballot Measure/Legislative Crisis Fund and a Media Campaign Fund (the NEA segregated the fund into two separate accounts.)

According to Richard Wilkof, Attorney for the NEA, the Ballot Measure/Legislative Crisis Fund (the Ballot Fund) was designed to assist state affiliates in dealing with ballot measures and legislative crises within their respective states. Also according to Mr. Wilkof, the Media Campaign (the Media Fund) was designed to be used for national and state media campaigns to advance the cause of public education and to publicize the role of the NEA and its affiliates in improving the quality of public education.¹

The Bylaw established a five-dollar increase to members as well as fee payers, 60% of which would be deposited into a segregated Ballot Fund and 40% into the Media Fund. These Funds were designed to receive money from members and agency fee payers for a five-year period. The Bylaw allowed states to opt out of funding the Ballot Fund component if state law did not allow such activity. The Washington Education Association (WEA) opted out, and NEA has confirmed that all funds collected from their Washington members and agency fee payers were deposited only into the Media Fund².

Since no money from NEA Washington members or agency fee payers was placed in the Ballot Fund, staff is of the opinion that this fund is not required to report as a political committee under RCW 42.17.040.

In addition, since the Media Fund (the fund into which all Washington members' and agency fee payers' monies were deposited) does not make political contributions, it also is not required to report as a political committee pursuant to RCW 42.17.040.

Findings regarding alleged violation of RCW 42.17.680

Regardless of whether the NEA used funds received from members and agency fee payers to make contributions to political committees or as political contributions without the written authorization of the employee, the NEA is not the employer or entity

¹ Report of Investigation, Exhibit 7, page 5.

² Report of Investigation, Exhibit 7, page 13.

responsible for the disbursement of funds in payment of wages or salaries. Therefore, the NEA had no legal obligation to obtain written requests from its members.³

Findings regarding alleged violation of RCW 42.17.760

For NEA fiscal year 1998-99 (September 1, 1998 – August 31, 1999), on October 8, 1998, the NEA contributed \$15,000 to the Paycheck Protection Initiative and an additional \$15,000 to No on Initiative 200. The NEA used its general fund money to make these contributions.

For that period, the NEA's general fund contained both member dues and agency fee payer funds.

During NEA fiscal year 1999-2000 (September 1, 1999 – August 31, 2000), on July 14, 2000, the NEA contributed \$50,000 to Citizens for Quality Educators (Initiatives 728/732). This contribution came from the NEA general fund, which contained both member dues and agency fee payer funds.

During NEA fiscal year 2000-01 (September 1, 2000 – August 31, 2001), on September 22, 2000, the NEA contributed \$450,000 to Citizens for Quality Educators. According to an annual report released by Bob Chase, President of the NEA, the entire \$500,000 (the July 2000 and September 2000 contributions) was credited to the Ballot Fund. However, the Ballot Fund was not established until October 13, 2000, and, therefore, it had no funds at the time the contributions were made. Contributions made prior to October 13, 2000, were from general funds received during FY 99-00, which included agency shop fees.

On October 13, 2000, the NEA accessed an unsecured line of credit to augment its general fund for the \$450,000 contribution it made in September.

No evidence has been provided to date to substantiate the absence of agency fee payer money from the source of the funds for the \$450,000 contribution. During FY 00-01, the WEA had escrowed all agency fee payer funds and, even after release of 70% of the escrowed funds to WEA's general fund, no agency fee payer funds were transmitted to the NEA. However, given the date of the \$450,000 contribution- September 22, 2000 - and the fact that FY 00-01 withholding from members did not begin until at least September 30, 2000, there is substantial reason to believe that FY 99-00 funds were used for this contribution, funds that did include agency fee payer monies.

³ In *Evergreen Freedom Foundation v. Washington Education Association*, a Thurston County Superior Court judge found that school district employers are the persons responsible for obtaining employee authorizations prior to withholding funds for contributions to political committees or candidates (not the recipient committees). That decision was upheld by the Washington State Court of Appeals, Division 2 (*State ex rel. Evergreen Freedom Foundation v Washington Education Association*, No. 25272-4-II).

Without verification from NEA to the contrary, staff maintains that the \$30,000 contributed by NEA in FY 98-99 and the \$500,000 contributed by NEA in FY 99-00 and FY 00-01 contained agency fee payer monies, and the NEA did not have affirmative authorization from the fee payers prior to making these contributions.

The activity undertaken by the NEA in this matter mirrors the activity undertaken by WEA, which caused Thurston County Superior Court Judge Tabor to rule WEA's actions violated RCW 42.17.760 by using agency fees to influence an election or operate a political committee when it did not have approval by the agency fee payers. Additionally, the Court determined, based on the facts in the case, that WEA's actions were intentional and, therefore, doubled the damages awarded to the State. An appeal of that case is currently pending before Division II of the State Court of Appeals in *State of Washington ex rel. Public Disclosure Commission v. Washington Education Association, No. 28264-0-II*.

Staff Recommendation

Staff is alleging multiple violations of RCW 42.17.760 by the NEA because there is substantial reason to believe that between October 8, 1998 and September 20, 2000, the NEA used agency fee payer money to make contributions to influence an election or operate a political committee without having affirmative authorization from the individual fee payers. The contributions totaled \$530,000 from general fund monies made up of both agency fees and member dues.

Staff recommends that you find apparent multiple violations of RCW 42.17.760 by the NEA and refer the matter to the Office of the Attorney General for further action.